

AMENDED IN SENATE JULY 21, 1997

AMENDED IN SENATE JULY 11, 1997

AMENDED IN SENATE JUNE 16, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 849

**Introduced by Assembly Member Sweeney
(Principal coauthor: Assembly Member Thompson)**

February 27, 1997

An act to amend Sections 23817.5, 23817.7, 23817.8, and 23820 of, and to add Sections 23817.4, 23817.9, and 23817.10 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 849, as amended, Sweeney. Alcoholic beverages: licenses.

The Alcoholic Beverage Control Act prohibits the application for, and issuance of, until January 1, 1998, an original retail off-sale beer and wine license for any premises if the applicant premises are located in a city, county, or city and county where the number of retail off-sale beer and wine licenses or total number of retail off-sale beer and wine licenses and off-sale general licenses exceeds one license for a certain number of inhabitants. Notwithstanding any other provision of law, existing law, until January 1, 1998, allows a retail off-sale beer and wine replacement license to be issued under specified conditions.

This bill would recast and extend the operation of those provisions indefinitely. The bill would make related changes.

Existing law allows the Department of Alcoholic Beverage Control to issue additional on-sale or off-sale general licenses for each specified increase in the number of inhabitants in a county.

This bill would provide similar authorization with respect to off-sale beer and wine licenses for each specified increase in the number of inhabitants in a city or a county.

Existing law prohibits the Department of Alcoholic Beverage Control from restricting the number of beer, off-sale beer and wine, beer and wine wholesaler's, or winegrower's licenses in any county, as specified.

This bill would eliminate that prohibition with respect to off-sale beer and wine licenses, thereby allowing the department to restrict the issuance of off-sale beer and wine licenses in a county to a certain number, as specified.

Existing law also provides that, notwithstanding that prohibition, until January 1, 1998, the Department of Alcoholic Beverage Control may: (1) approve an application for a retail off-sale beer and wine license in those areas if the applicant shows that public convenience and necessity would be served by the issuance and certain other conditions are met, and (2) issue a retail off-sale beer and wine license to a licensed beer and wine wholesaler if certain conditions relating to location of the license and types of sales are met.

This bill would extend the operation of those enabling provisions indefinitely and would make conforming changes.

This bill would state the Legislature's intent concerning a limitation on the number of premises licensed for the off sale of beer and wine.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23817.4 is added to the Business
2 and Professions Code, to read:
3 23817.4. The Legislature finds and declares that the
4 public welfare and morals require that there be a



1 limitation on the number of premises licensed for the off
2 sale of beer and wine.

3 SEC. 2. Section 23817.5 of the Business and
4 Professions Code is amended to read:

5 23817.5. (a) (1) The number of premises for which
6 an off-sale beer and wine license is issued shall be limited
7 to one for each 2,500, or fraction thereof, inhabitants of
8 the city or county in which the premises are situated. No
9 additional off-sale beer and wine license, other than a
10 renewal or transfer or as permitted by Section 23821, shall
11 be issued in any city or county where the number of
12 premises for which all off-sale beer and wine licenses are
13 issued is more than one for each 2,500, or fraction thereof,
14 inhabitants of the city or county.

15 (2) The number of premises for which an off-sale beer
16 and wine license is issued in a city and county, in
17 combination with the number of premises for which an
18 off-sale general license is issued in a city and county, shall
19 be limited to one for each 1,250, or fraction thereof,
20 inhabitants of the city and county in which the premises
21 are situated. No additional off-sale beer and wine license,
22 other than a renewal or transfer or as permitted by
23 Section 23821, shall be issued in any city or county where
24 the number of premises for which all off-sale beer and
25 wine licenses in combination with off-sale general
26 licenses are issued is more than one for each 1,250, or
27 fraction thereof, inhabitants of the city and county.

28 (b) Notwithstanding subdivision (a), a retail off-sale
29 beer and wine replacement license shall be issued upon
30 application when all of the following conditions exist:

31 (1) The replacement license is only for use at a
32 premises which was licensed within the past 12 months.

33 (2) The prior licensee abandoned the premises or the
34 original license is subject to a bankruptcy proceeding and
35 the prior licensee has no right to operate at that location.
36 For purposes of this paragraph, “abandoned” means that
37 the prior licensee is not exercising dominion or control
38 over the premises.

1 (3) An applicant for a replacement license shall
2 accompany the application with a fee of one hundred
3 dollars (\$100).

4 (c) The following limitations shall apply to the
5 issuance of a replacement license:

6 (1) The replacement license shall not be transferred to
7 another premises.

8 (2) All conditions imposed on the original license shall
9 apply to the replacement license.

10 (3) The original license shall not be transferred
11 subsequent to the issuance of the replacement license.

12 SEC. 3. Section 23817.7 of the Business and
13 Professions Code is amended to read:

14 23817.7. (a) Notwithstanding Section 23817.5, the
15 department may approve an application for an off-sale
16 beer and wine license in areas covered by Section 23817.5,
17 if the applicant shows that public convenience or
18 necessity would be served by the issuance, and where all
19 of the following conditions are found to exist:

20 (1) The applicant premises are located in a crime
21 reporting district that is below that specified pursuant to
22 paragraph (1) of subdivision (a) of Section 23958.4.

23 (2) The applicant premises are located in an area that
24 falls below the concentration level provided in paragraph
25 (3) of subdivision (a) of Section 23958.4.

26 (3) The local governing body of the area in which the
27 applicant premises are located, or its designated
28 subordinate officer or body, determines that public
29 convenience or necessity would be served by the
30 issuance.

31 (b) The department may impose reasonable
32 conditions on a licensee as may be needed in the interest
33 of the public health, safety, and welfare regarding
34 signing, training for responsible beverage sales and hours,
35 and mode of sale.

36 SEC. 4. Section 23817.8 of the Business and
37 Professions Code is amended to read:

38 23817.8. (a) Notwithstanding Section 23817.5, the
39 department may approve an application for an off-sale
40 beer and wine license by a licensed beer and wine

1 wholesaler, even though the applicant premises will be
2 located in an area having an undue concentration of
3 off-sale beer and wine licenses, as provided in paragraph
4 (3) of subdivision (a) of Section 23958.4, provided each of
5 the following conditions are met:

6 (1) The off-sale beer and wine license shall be held at
7 the same location as the beer and wine wholesaler license.

8 (2) The off-sale beer and wine license shall be
9 restricted to sales solicited and accepted by direct mail,
10 telephone, or on-line computer. The off-sale beer and
11 wine license shall not be used for operations conducted
12 from a retail store open to the public.

13 (b) The department may impose reasonable
14 conditions on a licensee as may be needed in the interest
15 of the public health, safety, and welfare regarding
16 signing, training for responsible beverage sales, hours,
17 and mode of sale.

18 SEC. 5. Section 23817.9 is added to the Business and
19 Professions Code, to read:

20 23817.9. For the purposes of Section 23817.5,
21 beginning with the year 2000, population shall be
22 determined by the most recent United States decennial
23 census or a single subsequent census between United
24 States decennial censuses validated by the Population
25 Research Unit of the Department of Finance ~~three~~ *five*
26 years after a United States decennial census.

27 SEC. 6. Section 23817.10 is added to the Business and
28 Professions Code, to read:

29 23817.10. Whenever it is made to appear to the
30 department by satisfactory evidence that the population
31 in any city or county has increased by more than 2,500 or
32 multiples of 2,500 inhabitants or the population in a city
33 and county has increased by more than 1,250 or multiples
34 of 1,250 inhabitants since the most recent United States
35 decennial census and if the total number of off-sale beer
36 and wine licenses in that city, county, or city and county
37 does not then exceed the maximum specified in Section
38 23817.5, the department may issue additional licenses, not
39 to exceed one off-sale beer and wine license for each
40 increase of 2,500 inhabitants in the city or county or for

1 each increase of 1,250 inhabitants in the city and county
2 since the taking of the census.

3 SEC. 7. Section 23820 of the Business and Professions
4 Code is amended to read:

5 23820. The department may make all rules consistent
6 with the provisions of Section 22 of Article XX of the
7 Constitution, or the provisions of this division, necessary
8 to carry into effect the provisions of this article, and to
9 restrict the issuance of alcoholic beverage licenses,
10 including seasonal licenses, but not including beer, beer
11 and wine wholesaler's, and winegrower's licenses, to a
12 number in any county as the department shall determine
13 is in the interest of public welfare and morals,
14 convenience, or necessity.

